

APPEAL NO. 92153

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held in (city), Texas, on March 3, 5, and 12, 1992, with (hearing officer) presiding as hearing officer. He determined that appellant was not injured in the course and scope of her employment on April 25, 1991. The hearing was twice continued for reasons related to discovery disputes. In essence, appellant contended that respondent should not be allowed to present any evidence to dispute the compensability of appellant's claim due to respondent's failure to timely exchange evidence and to answer appellant's interrogatories. Appellant has appealed both the hearing officer's decision permitting respondent to adduce evidence and the sufficiency of the evidence to support the determination that appellant did not meet her burden of proof to show she sustained a compensable injury. Respondent did not file a response to appellant's request for review.

DECISION

Because a complete record of the contested case hearing is not available for our review, we reverse and remand.

Significant portions of the tape recordings, including testimony, forwarded as the record of the proceedings below are inaudible. Article 8308-6.42 of the 1989 Act requires the Appeals Panel to consider the "record developed at the contested case hearing." See Texas Workers' Compensation Commission Appeal No. 91017 (Docket No. FW-00020-91-CC-1) decided September 25, 1991; Texas Workers' Compensation Commission Appeal No. 92115 (Docket No. DA-A-083472-01-CC-DA41) decided May 4, 1992; and Texas Workers' Compensation Commission Appeal No. 92131 (Docket No. BU91147591-03-CC-BU41) decided May 15, 1992. The Decision and Order of the hearing officer indicate that a court reporter was present. However, no transcript of the proceedings prepared by a court reporter was provided. We do not know whether a court reporter made an additional tape recording of the proceedings or transcribed them. The hearing officer may be able to avoid having to recall the witnesses for additional testimony if audible tape recordings can be located or those being returned with this decision can be sufficiently enhanced or transcribed. In any event, it is necessary upon remand that the record be reconstructed sufficiently so that this panel can fully review all of the testimonial evidence, statements of counsel, and rulings of the hearing officer.

We reverse and remand for appropriate reconstruction of the record.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge